



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

|

[REDACTED]
BCS/150605

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 18, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to a notice of premium and case closure and whether the agency correctly imposed a restrictive reenrollment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a Notice of Decision dated March 22, 2013 that informed her that she would have a BadgerCare+ premium effective April 1, 2013 in the amount of \$172.00 per month. It was sent to [REDACTED]. It contains appeal instructions and the appeal deadline of May 17, 2013.
3. Petitioner was sent an April 17, 2013 notice that informed her that the adults in the household would lose BadgerCare+ eligibility on May 1, 2013 for lack of premium payment. It was sent to [REDACTED]. It contains appeal instructions and the appeal deadline of June 17, 2013.

4. Petitioner was sent a notice dated May 6, 2013 that informed Petitioner that a restrictive reenrollment for BadgerCare+ was imposed on the adults in Petitioner's household beginning June 1, 2013. It was sent to [REDACTED]. It contains appeal instructions and the appeal deadline noted to be July 17, 2013.
5. This appeal was filed with the Division of Hearings and Appeals on July 12, 2013.
6. Petitioner moved from the [REDACTED] address in late April or early May 2013 though she did not change the address with the agency until June 4, 2013.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the effective date of the agency decision. *§49.45(5)(a), Wis. Stats.*

This appeal was not filed on time with respect to the premium notice nor the May 1, 2013 case closure thus the Division of Hearings and Appeals not have authority to address those issues. The appeal is, however, timely as to the restrictive re-enrollment.

Petitioner had been receiving medical assistance under BadgerCare Plus, which covers children under 19 and their parents. *Wis. Stat. § 49.665*. The agency ended her benefits as of February 1, 2013 because she failed to pay the premium due on their behalf by that date. The program's rules require recipients to pay a premium by "the 10th of the month prior to the month for which the premium is required." *Wis. Admin. Code § DHS 103.085(1)(d)2*. If a person fails to pay the premium by the end of the month for which it is due, benefits end on the last day of that month. *Wis. Admin. Code § DHS 103.085(1)(d)3*. Those whose benefits end because they did not pay a premium cannot reenroll for 12 months unless they did not pay because of circumstances beyond their control. These circumstances include:

- a. A problem with an electronic funds transfer from a bank account to the BadgerCare program.
- b. A problem with an employer's wage withholding.
- c. An administrative error in processing the premium.
- d. Any other circumstance affecting payment of the premium which the department determines is beyond the group's control, but not including insufficient funds.

Wis. Admin. Code, § DHS 103.085(3)(b)1.

Petitioner contends that she did not receive the notice of premium and would like to be able to pay the premium. While the family moved the move was after the premium notices were sent; I do not find good cause.

I do note, however, that even if the restrictive re-enrollment were to be lifted Petitioner would have to pay back premiums. *BadgerCare+ Eligibility Handbook (BEH), §19.8.2*. The adults have no outstanding medical bills and as of January 1, 2014 would not be BadgerCare+ eligible if income exceeds 100% of the Federal Poverty Level (\$1962.50 for a group of 4/\$2297.50 for a group of 5 – *BEH, §50.1*) and it was over 100% at the time of the premium determination.

CONCLUSIONS OF LAW

1. That the Division of Hearings and Appeals has no legal authority to make a decision on the merits of the April 1, 2013 BadgerCare+ premium nor the May 1, 2013 case closure as Petitioner's appeal was not timely filed for those issues.

2. Petitioner's appeal is timely with respect to the imposition of the BadgerCare+ restrictive re-enrollment.
3. That the agency correctly restricted Petitioner and her spouse's enrollment in the BadgerCare Plus program for 12 months for failing to pay a required premium.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of November, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 1, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability